

ADVERTISING LAWS: Before Placing a Print Advertisement, Make Sure it Complies with All State and Federal Laws

(Internet advertising is governed by 201 KAR 11:420)

This guide will allow you to review all of your print advertising prior to publication to make sure that it does not violate any state or federal laws.

State Laws:

The Kentucky Real Estate Commission (the "Commission") governs the publication of all advertisements for real property that are placed by Kentucky licensees.

KRS 324.117(4) requires all licensees to advertise in the name of the real estate company that holds their licenses or in the name of the principal broker for whom they work, with a designation that he or she is the principal broker.

KRS 324.117(1) prohibits any advertising that is intentionally false, misleading or deceptive.

201 KAR 11:011, Section 1(3)(1)-(c) states that "false, misleading or deceptive" means an advertisement that is prohibited because it 1) is contrary to fact; 2) leads a person to a mistaken belief or conclusion; or 3) knowingly made a representation that is contrary to fact.

201 KAR 11:105(1) requires licensees to have a written listing agreement and the consent of the owner before publicly promoting or advertising a specific piece of property. Therefore, a licensee can only print ads for his or her own listings and cannot advertise other agents' listings in their newsletters, newspaper ads or brochures.

201 KAR 11:105(2) prohibits a licensee from placing a sign on any property without the written consent of the owner.

KRS 324.160(4)(m) and 201 KAR 11:121, Section 2(1) prohibit licensees from offering any prizes, money, free gifts, rebates or any other thing of value to prospective purchasers or to the general public as an inducement. A licensee can legally advertise the fee that he or she will charge for his or her services only. 201 KAR 11:121, Section 1(2)(a). In addition, a licensee can legally advertise inducements offered by the licensee's client. 201 KAR 11:121, Section 1(2)(b).

KRS 324.160(4)(b) prohibits a licensee from making any substantial misrepresentation or failing to disclose known defects that substantially affect the value of a property. Therefore, all licensee advertising must be accurate and fairly represent the property. If you are going to advertise square footage, for example, verify the accuracy of the figures before advertising them.

Federal Laws:

The Truth in Lending Act mandates that advertisers make certain disclosures if they are going to advertise certain "trigger" terms, such as down payment, monthly payment, etc. In general, if you mention "no down payment," "\$500 per month" or a similar payment term, you must disclose the length of repayment, the interest rate, etc. Terms such as "creative financing" are not considered "trigger terms" and therefore do not require such disclosures in the advertisement.

Federal Fair Housing laws prohibit owners or real estate licensees from discriminating based upon race, gender, national origin, familial status or religion. Some areas, such as Louisville, have also adopted ordinances that prohibit discrimination based upon sexual orientation. There are numerous phrases, such as "singles only," "no children allowed," etc. that constitute a

violation of Federal Fair Housing. It is acceptable to advertise that the property has a "pet policy." If you are planning to run an ad that may touch upon a fair housing issue, please run it by the Commission or the Commission on Human Rights.

Lee Harris, the Commission's General Counsel, is always available to review any proposed advertisements you may have. Please email or fax or mail your proposal to Ms. Harris for approval, if you have any question as to whether it is in compliance with the statutes and regulations governing advertising. Please send the proposals at least 2 days prior to publication deadlines in order to allow sufficient time for receipt and review.